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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,384	10/06/1999	WILLIAM R. WHEAT	31223-74058	1958

25264 7590 04/07/2003

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EXAMINER
JACKSON, MONIQUE R

ART UNIT	PAPER NUMBER
1773	

DATE MAILED: 04/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-15

Office Action Summary	Application No.	Applicant(s)	
	09/413,384	WHEAT ET AL.	
	Examiner	Art Unit	
	Monique R Jackson	1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 January 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4,6-10,27,28,31 and 32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4,6-10,27,28,31 and 32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The amendment filed 1/29/03 has been entered. Claims 11-12 and 29-30 have been canceled. Claims 1-2, 4, 6-10, 27, 28, and 31-32 are pending in the application.

Claim Rejections - 35 USC § 102

2. Claims 1-2, 4, 6-10, 27, 28, and 31-32 are rejected under 35 U.S.C. 102(e) as anticipated by Peiffer et al (USPN 6,086,982.) Peiffer et al '982 teach a biaxially oriented polypropylene packaging film comprising a base ply essentially consisting of an isotactic propylene polymer having at least 90% by weight, in particular 98 to 100% by weight of propylene units and the corresponding comonomer content of not more than 10% by weight, or 0 to 2% by weight, ethylene (wherein 0 to 2% by weight encompasses the instantly claimed ranges of less than 1 weight percent, 0.05 to 0.8 wt%, 0.1 to 0.2wt%, and 0.5 to 0.7wt%; Abstract; 4:11-23.) In a preferred multilayer embodiment, the polypropylene film comprises at least one top ply or if necessary top plies on both sides, composed of polymers of α-olefinic polymers having 2 to 10 carbon atoms, such as propylene homopolymer, copolymer of ethylene and propylene, or terpolymer of ethylene and propylene and 1-butylene (which are inherently thermoplastic polymers; Col. 5:57-6:37.) Preferred embodiments of the polypropylene film according to the invention are three-ply wherein the structure, thickness and composition of a second top ply can be chosen independently of the top ply already present (7:1-14.) The thickness of the top ply or plies is generally greater than 0.1μm and is preferably in the range of 0.1 to 10μm (*which reads on "said surface layer has a thickness within the range of 0.3 microns to 80 microns" as in instant claim 2*; Col. 7, lines 14-18.) The total thickness of the polypropylene film according to the invention may vary within wide limits and depends on the intended use but it is preferably 4

to 100 μm, with the base ply accounting for about 40 to 100% of the total film thickness (*which reads on a core layer within the range of 5 to 150 microns, and surface layers with a thickness less than said core as in instant claims 2 and 9*; Col. 7, 28-33.) Peiffer et al teach that the film is formed by coextruding the layers and then biaxially orienting the coextruded film wherein the film provides improvements over other heat-sealable packaging films (Col. 1-2; Col. 7, lines 36-65.) Therefore, considering Peiffer et al teach a multilayer polyolefin film comprising a core layer of isotactic propylene polymer formed from propylene and up to 10wt% ethylene and preferably 0-2wt% ethylene, which encompasses the instantly claimed ranges, and a top ply or plies made from olefin polymers such as ethylene-propylene copolymers which are inherently thermoplastic polymers "capable of forming an effective heat seal with a corresponding thermoplastic polymer upon heating and compression", wherein the thickness of the film and the layers fall within the instantly claimed ranges, the invention taught by Peiffer et al anticipates the instantly claimed invention. With regards to the limitation "ethylene in an amount of no more than one weight percent **which is effective to provide an inter-layer bond strength with said surface layer…**" the Examiner takes the position that this limitation is met by the Peiffer et al teaching of a isotactic polypropylene with an ethylene content of 0-2wt% as discussed above, wherein the recitations with regards to the particular inter-layer bond strength enhancement percentages are descriptions of the ethylene content limitations which have been met by the invention taught by Peiffer et al given that the range taught by Peiffer et al encompasses the instantly claimed range. With regards to the limitation "a thermoplastic polymer capable of forming a heat seal with a corresponding thermoplastic polymer upon heating to an elevated temperature and compression", the Examiner takes the position that given Peiffer et al teach top

plies formed from thermoplastic polymers, particularly ethylene-propylene copolymer as utilized in the instant invention, the invention taught by Peiffer et al reads on the instantly claimed invention given that any thermoplastic material is "capable of forming a heat seal" to some degree with a second thermoplastic polymer wherein the second thermoplastic polymer is a heat-sealable material or a tie layer material. Alternatively, the Examiner notes that Peiffer et al teach a biaxially oriented, coextruded three-ply film comprising the same materials as instantly claimed, produced by the same method as the instant invention, and therefore, appears to be substantially identical to the instantly claimed product and hence would inherently have the same properties as the instant invention.

Response to Arguments

3. Applicant's arguments filed 1/29/03 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Monique R. Jackson
Primary Examiner
Technology Center 1700
April 3, 2003